

HANNI M. FAKHOURY

California Bar No. 252629

FEDERAL DEFENDERS OF SAN DIEGO, INC.

225 Broadway, Suite 900

San Diego, California 92101-5008

Telephone: (619) 234-8467

Hanni_Fakhoury@fd.org

Attorneys for Ms. Dagnino

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE WILLIAM Q. HAYES)

UNITED STATES OF AMERICA,

Plaintiff,

v.

YVETTE DAGNINO, ET AL.,

Defendant.

CASE NO.: 11CR0229-WQH-02

DATE: April 11, 2011

TIME: 2:00 p.m.

DEFENDANT'S RESPONSE TO UNITED
STATES' REQUEST FOR JUDICIAL NOTICE
AND MOTION FOR LEAVE TO FILE FURTHER
MOTIONS

I.

STATEMENT OF FACTS

On January 19, 2011, a six count indictment was filed, charging Ms. Dagnino and Ms. Beltran with transporting illegal aliens and aiding and abetting, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (v)(ii)

On March 30, 2011, this Court held an evidentiary hearing regarding the validity of the traffic stop that resulted in Ms. Dagnino's arrest. The Court heard the testimony of Agent Garcia who explained he wanted to pull over the red car and requested the Brawley police initiate a traffic stop. He further explained that despite the fact he was following the red car at the time the Brawley police pulled the Sentra over (meaning he witnessed the traffic stop), he had no idea why the red car was pulled over. He also conceded that his report, which stated the red car was pulled over "for failure to use a turn signal as the Sentra turned northbound on highway 111 from River Street" was wrong as Highway 111 and River street do not intersect.

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1 The Court also heard the testimony of Brawley police officer Kelly Brown, who explained that when
2 requested to pull the Sentra over, he was informed by Border Patrol that he had to find his own probable
3 cause. Moreover, Officer Brown explained that he ultimately decided to pull the Sentra over because it had
4 driven with its turn signal on for approximately 100 feet without making a left turn. He conceded that there
5 were left turns about every mile on highway 111, and testified that he had followed the Sentra for
6 approximately 2 miles before pulling it over.

7 **II.**

8 **CALIFORNIA VEHICLE CODE § 22108 FURTHER HIGHLIGHTS THE LACK OF**
9 **REASONABLE AND ARTICULABLE SUSPICION IN STOPPING MS. DAGNINO'S CAR**

10 Obviously Ms. Dagnino has no objection to the Court taking judicial notice of the law. Especially
11 when the law is favorable to her. California Vehicle Code § 22108 explains that “[a]ny signal of intention
12 to turn right or left shall be given continuously during the last 100 feet traveled by the vehicle before
13 turning.” In other words, Officer Brown’s testimony that the Sentra was driving 100 feet with its turn signal
14 on meant that Ms. Dagnino was operating the car in compliance with state law. It is important to note that
15 Vehicle Code § 22108 does not make the 100 feet limitation a maximum. Rather it is the minimum distance
16 away from which a car must have its signal on before turning. A car could drive for 1 mile with its turn
17 signal on provided that at least 100 feet before the turn, a car initiates its turn light. Thus, contrary to Officer
18 Brown’s testimony, Ms. Dagnino had not violated the California Vehicle Code.

19 Rather, the stop of Ms. Dagnino was part of a concerted effort by the Border Patrol to pull her over
20 for investigative purposes without any reasonable and articulable suspicion that she was engaged in criminal
21 activity or violated the law. Without any legal authority to initiate a traffic stop, they invited Officer Brown
22 to find his own probable cause. He waited 100 feet before pulling her car over. As Vehicle Code § 22108
23 shows, signaling for 100 feet was not a violation of the vehicle code.

24 The stop of Ms. Dagnino was illegal. All fruits obtained as a result must be suppressed.

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III.

CONCLUSION

For the reasons stated above, Ms. Dagnino respectfully requests that the Court grant her motion to suppress.

Respectfully submitted,

Dated: April 4, 2011

s/ Hanni M. Fakhoury

HANNI M. FAKHOURY

Federal Defenders of San Diego, Inc.

Attorneys for Ms. Dagnino

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

JOSE CASTILLO

Assistant U.S. Attorney
Email: Jose.Castillo3@usdoj.gov

BRIAN P. FUNK

Law Office of Brian P Funk
Email: bfunkesq@cs.com

REZA KERAMATI

Employment Mediation & Litigation Services, APC
Email: rabrera@emslaw.com

Respectfully submitted.

Dated: April 4, 2011

/s/ Hanni Fakhoury

HANNI M. FAKHOURY

Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5030
(619) 234-8467 (tel)
(619) 687-2666 (fax)
e-mail: Hanni_Fakhoury@fd.org